

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 198
Award No. 198

Claimant: A. G. MONTANO

PARTIES TO DISPUTE Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad Company

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a five (5) working day suspension without pay was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the Collective Bargaining Agreement.
2. That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Claimant was notified to attend a formal Investigation to be held at the office of the Manager Track Programs in Bloomington, California on April 15, 1997. The purpose of the hearing was to assess the Claimant's responsibility in violating various safety rules. In particular, the following portions of the rules were cited:

1.1 Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

It is the responsibility of every employee to exercise care to avoid injury to themselves or others. Working safely is

a condition of employment with the Company. The Company will not permit any employee to take and unnecessary risk in the performance of duty.

No job is so important, no service so urgent, that we cannot take the time to perform all work safely. (emphasis contained in the original letter)

1.1.1 Maintaining a Safe Course

In case of doubt or uncertainty, take the safe course.

1.1.2 Alert and Attentive

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

23.2 Protection of Body Parts

Do not place your hands, fingers, feet, legs, or any part of your body in a position where they might be caught, pinched or crushed.

The charges arose from an incident which occurred on March 12, 1997. The Claimant had gone on duty at 7:00 a.m. and off duty at 12:15 p.m. after sustaining a personal injury. The Carrier alleges that the Claimant attempted to place a tie plate between the tie and the rail with his hands while simultaneously holding the rail up with the rail clamp of Tamper Machine 253. The clamp slipped and the rail fell pinning the Claimant's finger between the tie plate and the tie.

The Claimant has been employed by the Carrier since November 3, 1969. He has been a Tamper Machine Operator since 1980.

CARRIER'S POSITION

The Carrier argues that the Claimant did not follow the customary procedure in replacing the tie plate. They say he should have moved the Tamper ahead of where the plate was to be installed. He then should have used a jack to lift the rail before positioning the plate underneath the rail. They claim he could then have backed up and tamped the plate in place. The Carrier contends that if the Claimant was not going to follow this procedure, he at least should have used a hook or another acceptable tool, to push the tie plate into position. If he had done either of these two things, the Carrier believes the Claimant would not have been injured.

Furthermore, the Carrier argues, the Claimant admitted that he was aware that the clamp would probably slip.

ORGANIZATION'S POSITION

The Organization contends that the notice of hearing was deficient. They argue that it was incomplete and misleading. As a result, they believe the Claimant's due process rights were violated.

As to the merits of the case, the Organization holds that on the day in question, the Claimant worked as safely as he could under the circumstances. They insist that the Claimant is knowledgeable about the Carrier's rules and functions with an intense sense of obligation, loyalty, and dedication. They point to the Claimant's lengthy tenure. They allege that the Claimant was only following instructions and procedures on the day in question.

The Organization further argues that the fact the Claimant suffered an injury on the job is no indication of negligence on his part. If anything, the Claimant was guilty of enthusiastically performing his job. The Organization believes the evidence was insufficient to support the allegations. They urge the Board to exonerate the Claimant of all charges.

DECISION


By the Claimant's own testimony, he was aware that the Tamper Machine was not reliable to hold the rail indefinitely while he manually positioned the plate. In addition, the Ballast Regulator Operator, who worked with the Claimant on the three-man crew, also testified that the Tamper Machine would often slip causing the rail to fall. Furthermore, the Ballast Regulator testified, that based on experience, he would never use his hands to position a tie plate. Instead, he explained that he would use a shovel or some other tool to push the tie plate into position.

The evidence presented in this case, along with common sense, causes the Board to believe it was or should have been common knowledge that an employee had to prevent using any part of his body in placing the tie plates under the rails. This is particularly true when there are alternative ways of performing the task. In this case, it is apparent the Claimant should have been even more careful in view of his knowledge that the clamps of the machine were unreliable. He could have suffered an even more serious injury which could have jeopardized his career. Thankfully this did not happen.

Despite the Claimant's lengthy tenure and reasonably good employment record, the Board believes the penalty issued was reasonable in light of the serious nature of the incident.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

Submitted this 30th of January, 1998.
Denver, Colorado